

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS,

Complainant,

and

ALLIED BUILDERS SYSTEM,

Respondent.

CASE NO. OSH 2010-16

ORDER NO. 421

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) on February 28, 2011, and attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Complainant), and Darlene Y.F. Itomura, Esq., for Respondent ALLIED BUILDERS SYSTEM (Respondent), IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Whether Respondent failed to conduct effective inspections on subcontractor re-roofing work activities at its project site as stated in Citation 1, Item 1,<sup>1</sup> of the Citation and Notification of Penalty; and

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<sup>1</sup>Citation 1, Item 1, assessed a penalty of \$4,200.00 for a "serious" violation, and alleged in part:

[Hawaii Administrative Rules] HAR §12-110-2(b)(3) was violated because:

The general contractor did not conduct effective inspections on subcontractor re-roofing work activities at their project site to identify and correct unsafe conditions and work practices. On January 26, 2010, a subcontractor employee fell through an unprotected roof skylight and sustained serious injuries.

2. Whether Respondent willfully allowed subcontractor employees to walk and work on a commercial building roof when fall protection systems were not in place, as stated in Citation 2, Item 1,<sup>2</sup> of the Citation and Notification of Penalty.
- B. The deadline for the parties' final naming of witnesses is **March 31, 2011**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness's address and the general subject to which the witness will testify, to the other party and to the Board by this date.
  - C. The parties may engage in discovery without prior motion or showing of good cause. The discovery cutoff date is **May 2, 2011**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this requirement.

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§12-110-2(b)(3) states "Periodic inspections. The employer shall conduct periodic in-house safety and health inspections so that new or previously missed hazards or failures in engineering, work practice, and administrative controls are identified. The in-house inspections will be conducted by individuals who are trained to recognize hazardous conditions, as members of the safety and health committee or a person designated and trained by the employer for the facility's safety and health program."

<sup>2</sup>Citation 2, Item 1, assessed a penalty of \$49,000.00 for a "willful" violation, and alleged in part:

HAR §12-110-2(f)(1)(A) was violated because:

The general contractor allowed subcontractor employees to walk and work on a commercial building roof when fall protection systems were not in place around thirty-eight skylights that were between 25 to 29 feet above interior floor level. As fall protection systems around the roof skylights were not in place, the subcontractor employees were exposed to fall hazards with the potential for serious injuries. On January 26, 2010, a subcontractor employee fell through an unprotected roof skylight and sustained serious injuries.

§12-110-2(f)(a)(A) states "Where one contractor is selected to execute the work of a project, that contractor shall ensure compliance with the requirements of the standards of part 3 of [Title 12] from the contractor's own employees as well as from all subcontractor employees on the project."

- D. Trial in this matter is scheduled for **May 31 and June 1, 2011, at 9:00 a.m.** in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.
- E. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, March 1, 2011.

HAWAII LABOR RELATIONS BOARD

  
SARAH R. HIRAKAMI, Member

  
NORMAN K. KATO II, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General  
Darlene Y.F. Itomura, Esq.